No. 97-195

Supreme Court, U.S.
FILED
SEP 2 1997
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In The

Supreme Court of the United States

October Term, 1996

JESUS MIRANDA,

Petitioner,

vs.

CITY OF EL PASO, TEXAS; EL PASO POLICE DEPARTMENT; EL PASO COUNTY, and SHERIFF LEO SAMANIEGO, Individually and in his official capacity as the SHERIFF OF EL PASO COUNTY, TEXAS,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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PARTIES TO THE PROCEEDING

The petition accurately lists the parties to the Proceeding.

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following persons have an interest in the outcome of the case. These representations are made so that the judges of this Court may evaluate possible disqualification or recusal.

Petitioner:

Jesus Miranda

Petitioner's Counsel:

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Respondent:

Leo Samaniego, Sheriff of El Paso County

Respondent:

El Paso County

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STATEMENT OF FACTS

The facts are undisputed. In the early morning hours of May 3, 1992, Petitioner, Jesus Miranda, was observed by George Sibley and Arturo Ruiz, members of the El Paso Police Department-Vice Squad Unit, picking up a known transvestite prostitute. (ROA Vol. II, 192-194). The Petitioner, in a pick-up truck, was then observed driving with the transvestite prostitute into an alley way. (ROA Vol. II, 194-196 and Vol. II, 211-212). The police officers approached the vehicle and found the Petitioner and the transvestite prostitute in the back of the pick-up, in a compromising position. (ROA Vol. II, 199-201). Upon further investigation of what they believed to be illegal conduct, Sibley and Ruiz requested identification of the transvestite prostitute and the Petitioner. (ROA Vol. II 203-205). When the Petitioner was asked for his I.D. he failed to produce any type of valid identification. (ROA Vol. II, 205). Petitioner, then identified himself verbally, and when the arresting officers ran a computer check on the information provided by Petitioner, the officers were informed that the Petitioner had an outstanding warrant for his arrest. (ROA Vol. 215-216). Petitioner was placed under arrest by Sibley and Ruiz and transported to an El Paso Police Department Substation. (ROA Vol. II, 216). El Paso Police Officer James Price transported Petitioner to the El Paso County Detention Facility for booking on the outstanding warrant. (ROA Vol. I, 96-97). At this point Officer Price also placed the Petitioner under arrest for two sealed indictments stemming from charges of delivery of a controlled substance. (ROA Vol. I, 97-98). The indictments were issued for an individual named Jesus Miranda. (ROA Vol. I, 166-167). There was no further information contained on the indictments. (ROA Vol. I. 166-167). On May 4, 1992, the day after the arrest of Petitioner, it was discovered that the Jesus Miranda listed on the sealed indictment was not the Petitioner. (ROA Vol. II, 220-221). These charges were then promptly dismissed as to him. (ROA Vol. II,

220-221). Petitioner then pled guilty to the outstanding warrant for which he was initially arrested and sentenced to time served and released. (ROA Vol. II, 221-225). Two years later, Petitioner filed suit claiming that he was sexually assaulted while incarcerated. At no time during his incarceration did Petitioner make an outcry that he had been assaulted. (ROA Vol. II, 239). Respondents were not even notified until two years later at the time that Petitioner filed suit of his alleged assault. (ROA Vol. II, 239).

LOWER COURT PROCEEDINGS

Petitioner filed his original petition on April 29, 1994 in the County Court at Law Number Four, in the County of El Paso. (ROA Vol. II, 393). Petitioner's suit was filed against the City of El Paso, Texas, the El Paso Police Department, El Paso Police Officer's Arturo Ruiz and George Sibley, the County of El Paso and Leo Samaniego, Sheriff of El Paso County, in his official and individual capacity. (ROA Vol. II, 393). Petitioner's original Petition alleged violation of his Constitutional rights under the Fourth, Eighth, and Fourteenth Amendments to the United States Constitution. (ROA Vol. II, 393-408). Petitioner further alleged causes of action for false arrest, false imprisonment, and negligence under the Texas Tort Claims Act. (ROA Vol. II, 393-408). Respondents filed their Petition for Removal on May 25, 1994, seeking to remove this lawsuit to the United States District Court for the Western District of Texas. (ROA Vol. II, 386-392). On October 20, 1994, Petitioner filed a Motion to Dismiss El Paso Police Department Officers Sibley and Ruiz. (ROA Vol. II, 348-350). The District Court entered an Order Dismissing Police Officers Sibley and Ruiz on October 24, 1994. (ROA Vol. II, 345-346). After proceeding with discovery, Respondents filed their Motion for Summary Judgment on July 14, 1995. (ROA Vol. II, 169-279). Petitioner filed his response on September 15, 1995. (ROA Vol. I, 81-167). Respondents filed

their Reply to Petitioner's Opposition to Respondents' Motion for Summary Judgment on October 10, 1995. (ROA Vol. I, 75-80). Petitioner filed his Supplemental Response to Respondents' Motion for Summary Judgment on October 23, 1995. (ROA Vol. I, 58-74). Respondents filed their Supplement to Motion for Summary Judgment on November 17, 1995. (ROA Vol. I, 46-52). Respondents filed their Objections to Petitioner's Supplemental Response to Respondents' Motion for Summary Judgment on November 17, 1995. (ROA Vol. I, 42-45). A hearing on Respondents' Motion for Summary Judgment was held on November 20, 1995. Petitioner filed his Supplemental Exhibits in Support of Petitioner's Opposition to Summary Judgment on November 21, 1995. (ROA Vol. I, 23-41). On November 30, 1995 the Honorable Royal Ferguson signed the Order Granting Respondents Motion for Summary Judgment on all claims asserted by Petitioner. (ROA Vol. I, 4-18). The Order was filed on December 4, 1995. (ROA Vol. I, 4-18). Petitioner filed his Supplemental Exhibits in Support of Petitioner's Opposition to Summary Judgment on December 4, 1995. (ROA Vol. I, 19-22). Petitioner filed his Notice of Appeal on January 3, 1996. (ROA Vol. I, 1-2). Opinion and Judgment were rendered in favor of Respondents on March 27, 1997 and Petitioner's Petition for Rehearing was denied on April 28, 1997.

STATEMENT OF THE CASE

Petitioner seeks review of the opinion and judgment of the United States Court of Appeals for the Fifth Circuit in Cause No. 96-50012, 111 F.3d 893 (5th Cir. 1997), styled *Jesus Miranda v. El Paso County, Texas; Leo Samaniego, Sheriff, Individually and in his official Capacity as the Sheriff of El Paso County, Texas* under the premise that the Court so far departed from the accepted and usual course of judicial proceedings by sanctioning the summary judgment entered by the trial court when there were clear issues of fact to be decided. Additionally,

Petitioner seeks reconsideration of this Court's Decision in *Baker v. McCollan*, 443 U.S. 137, 61 L. Ed. 2d 433, 99 S. Ct. 2689 (1979). As detailed below, there is no cause for this Court's review.

A. The Petition For Writ Of Certiorari Misrepresents Statements Allegedly Made By Officers Of The El Paso County Sheriff's Department.

In furtherance of his assertion that the Court of Appeals so far departed from the accepted and usual course of judicial proceedings by sanctioning the summary judgment entered by the trial court when there were clear issues of fact to be decided, Petitioner misrepresents statements listed in his petition. On pages 3 and 4 petitioner implies that the statements given are statements by a Sheriff's Department Officer. They are in fact statements which are attributed to an unidentified Sheriff's Department Sergeant as related by Petitioner in his deposition. In the record of this cause there are no depositions or sworn statements made by an officer of the El Paso Sheriff's Department which substantiates this testimony and therefore could not be considered by either the trial court or the Court of Appeals.

B. The Petition For Writ Of Certiorari Misrepresents The Admissibility Of Statements Made By The Jail Magistrate Scott Segal.

Petitioner in his Petition for Writ of Certiorari misrepresents to this Court that the affidavit of Jail Magistrate Scott Segal was admissible summary judgment evidence. Pursuant to the Federal Rules of Civil Procedure affidavits filed in support of a non-movant's response to a motion for summary judgment should be made on personal knowledge and set forth facts which would be admissible into evidence. Fed. R. Civ. P. 56(e). Segal's

affidavit plainly asserts facts of which he has no personal knowledge and which therefore would not be admissible. *Williamson v. U.S. Dept. of Agriculture*, 815 F.2d 368, 383 (5th Cir. 1987); Wright, Miller & Kane, Federal Practice and Procedure: Civil 2d Sec. 2738. As such, Petitioner is misdirecting this Court to consider evidence which was determined to be inadmissible by the fact finding trial court. *See opinion of the trial court*, Petitioner's Petition for Writ of Certiorari App. 13. Lastly, this inadmissibility issue is not before the Court.

C. The Petition For Writ Of Certiorari Misleads This Court In Failing To State That Petitioner Was Arrested Pursuant To A Valid Arrest Warrant.

In his petition seeking writ Petitioner fails to point out the crucial fact that Petitioner was arrested pursuant to a valid arrest warrant. Petitioner was arrested on three separate warrants. The first warrant was the one identified by the arresting officers when they conducted a field investigation. Petitioner pled guilty to the offense contained in this initial warrant and the time he spent in the El Paso County Detention Facility served to satisfy his sentence for this conviction. Petitioner has not challenged the validity of this warrant or of the conviction and sentence for the offense contained in this warrant. As such, the trial court's order granting Defendants' Motion for Summary Judgment was proper based on the fact that Petitioner was arrested, convicted and confined on a valid arrest warrant. *Baker v. McCollan*, 443 U.S.137, 99 S. Ct. 2689 (1979). *See also Albright v. Oliver*, 510 U.S. 266, 114 S. Ct. 807 (1994).

REASONS FOR DENYING THE WRIT

I.

THIS COURT SHOULD NOT RECONSIDER ITS DECISION IN *BAKER v. McCOLLAN*, 443 U.S. 137, 99 S. Ct. 2689 (1979).

The constitution does not guarantee that only guilty persons will be arrested. *Baker v. McCollan*, 443 U.S. 137, 145 (1979). If it did, section 1983 would provide a cause of action for every defendant acquitted or every suspect released. *Id.* "Due process does not require that every conceivable step be taken, at whatever cost, to eliminate the possibility of convicting an innocent person". *Baker* quoting *Patterson v. New York*, 432 U.S. 197, 208 (1977).

Petitioner, in his petition for writ, suggests that this Court's decision in *Baker* should be reconsidered in light of the facts of this case. He opines that the Court's decision in *Baker* does not provide clear guidance in the determination of whether a person arrested pursuant to a valid arrest warrant and then later released should be able to sue for an alleged violation of his constitutional rights. These suggestions, however, are clearly unfounded.

In *Baker* this Court was very clear in stating that an official charged with maintaining custody of the accused named in the warrant is not required to conduct an error free investigation of every such a claim. *Id.* Given the requirements that an arrest be made only on probable cause and that one detained be accorded a speedy trial, a peace officer executing an arrest warrant is not required by the constitution to independently investigate every claim of innocence, whether the claim is based on mistaken identity or other such defense. *Id.* The Court has already considered and rejected arguments made by Petitioner in stating

that "in view of the substantive analysis employed by the dissent, it would seem virtually impossible to reach a conclusion other than that any case of misidentification in connection with an arrest made pursuant to an admittedly valid warrant or concededly on probable cause would constitute a depravation of liberty with due process of law". *Baker* at 146. In other words, if this Court were to take Petitioner's perspective the flood gates of litigation would open with every arrested person claiming that they were misidentified and then subsequently requesting a check from the law enforcement agency who arrested them. Therefore, for these reasons, it is clear that the *Baker* case should not be reconsidered.

II.

THE PETITIONER'S FACT BOUND CLAIM THAT THE COURT OF APPEALS "SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS BY SANCTIONING THE SUMMARY JUDGMENT ENTERED BY THE TRIAL COURT WHEN THERE WERE CLEAR ISSUES OF FACT TO BE DECIDED" DOES NOT WARRANT REVIEW BY THIS COURT.

The application of law by the Court of Appeals was not a departure from the accepted and usual course of judicial proceedings. "Summary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed 'to secure the just, speedy and inexpensive determination of every action.' " *Celotex Corp. v. Catrell*, 477 U.S. 317, 327, 106 S. Ct. 2548, 2555 (1986). Further, summary judgment, "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine

issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); *see Hansen v. Continental Ins. Co.*, 940 F.2d 971, 975 (5th Cir. 1991); *Hogue v. Royse City*, 939 F.2d 1249, 1252 (5th Cir. 1991). When a motion for summary judgment is made and supported as provided by Fed. R. Civ. R. 56(e) an adverse party may not rest upon the mere allegations or denials but should instead set forth specific facts showing that there is a genuine issue for trial. *Duplantis v. Shell Offshore, Inc.*, 948 F.2d 187, 190-191 (5th Cir. 1991).

This Court's 1986 trilogy of summary judgment cases clarified the test for summary judgment. In the first case of the trilogy, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S. Ct. 2505 (1986), this Court stated that the trial court must consider the substantive burden of proof imposed on the party making the claim. A plaintiff has the burden with respect to each of his or her claims and a defendant has the burden with respect to his or her defenses and claims for affirmative relief. Therefore, *Anderson* requires the trial court to substantively evaluate the evidence offered by the moving and nonmoving parties. "[T]he requirement is that there be no *genuine* issue of *material* fact." *Id.* U.S. at 248 (emphasis in original). A dispute is "genuine" "if the evidence is such that a reasonable jury could return a verdict for the non-moving party." *Id.* A material fact is that which would affect the outcome of a lawsuit under the governing substantive law. *Id.* "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Id.*

In the second case of the trilogy, *Matsushita Electric Industrial Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 106 S. Ct. 1348 (1986), this Court reiterated the requirement that once the party moving for summary judgment has made a prima facie showing there is no genuine issue as to any material fact, the

nonmoving party must then come forward with "specific facts" showing a genuine issue for trial. "Its opponent must do more than simply show that there is some metaphysical doubt as to the material facts." *Id.* at 586. The burden shifts to the nonmoving party to produce evidence in support of its claims. "The nonmovant can satisfy its burden by tendering depositions, affidavits, and other competent evidence to buttress its claim." *Topalian v. Ehrman*, 954 F.2d 1125, 1132 (5th Cir. 1992). The nonmovant cannot establish a fact issue by resting on the mere allegations of the pleadings. "In fact, unsupported allegations or affidavits setting forth ultimate or conclusive facts and conclusion of law' are insufficient to either support or defeat a motion for summary judgment." *Galindo v. Precision Am. Corp.*, 754 F.2d 1212, 1216 (5th Cir. 1985).

In the third case of the trilogy, *Celotex Corp. v. Catrell*, 477 U.S. 317, 106 S. Ct. 2548 (1986), this Court held that when the moving party shows the opposing party is unable to produce the evidence in support of its case, summary judgment is appropriate. The entry of summary judgment is mandated "after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case and upon which that party will bear the burden of proof at trial." *Kidd v. Southwest Airlines, Co.*, 891 F.2d 540, 547 (5th Cir. 1990) (quoting *Celotex Corp.*, 477 U.S. at 318). In *Celotex Corp.*, it was not necessary for the motion for summary judgment to be supported by affidavits or other materials specifically negating the nonmoving party's claim so long as the District Court was satisfied of the absence of evidence to support it. The standard is not merely whether there is a sufficient factual dispute to permit the case to go forward, but whether a rational trier of fact could find for the non-moving party based upon the record evidence before the court. *James v. Sadler*, 909 F.2d 834, 837 (5th Cir. 1990).

As shown above, this court has given very clear direction in the granting of a summary judgment by a trial court. In the case at hand, however, Petitioner suggests that Court of Appeals erred in affirming the trial court in ruling that Petitioner failed to present evidence sufficient to establish a constitutional violation in contradiction of the above state case law. This is unfounded. In its ruling, the Court of Appeals relied on *Colle v. Brazos County*, 981 F.2d 237 (5th Cir. 1993). The *Colle* case plainly states that mere allegations are not enough to sustain a 42 U.S.C. § 1983 case. *Colle* at 244. A section 1983 plaintiff must be able to demonstrate a policy or custom which caused the alleged constitutional deprivation. *Id.* Further, courts have consistently "require(d) the claimant to state specific facts, not merely conclusive allegations." *Colle* quoting *Elliott v. Perez*, 751 F.2d at 1479.

In seeking review of this case, Petitioner seeks to have this Court rewrite the entire body of case law in regards to the standard for granting a summary judgment as cited above. This is evidenced by how Petitioner insists that this court consider statements which have been decided to be unacceptable summary judgment evidence. In other words, Petitioner wishes this Court to rule in the face of volumous case law, that mere allegations are sufficient to defeat a properly supported motion for summary judgment. This challenges settled law, sound policy and does not merit this Court's review.

CONCLUSION

For the reasons given above, Jesus Miranda's Petition for Writ of Certiorari, should be denied.

Respectfully submitted,

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